UNITED
NATIONS

CERD

International Convention on
the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/337/Add.3
11 February 1999

Original: ENGLISH

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9
OF THE CONVENTION

Fourteenth periodic report of States parties due in 1998

Addendum

MALTA*

[19 January 1999]

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* This document contains the thirteenth and fourteenth periodic reports, submitted in one document, due on 26 June 1996 and 1998, respectively.

The information submitted by Malta in accordance with the consolidated guidelines for the twelfth periodic report of Malta and the summary records of the meetings at which the Committee considered that report, see documents CERD/C/262/Add.4 and CERD/SR.1161-1162.

The annexes to the report submitted by the Government of Malta may be consulted in the Secretariat's file.

GE.99-40546 (E)

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I. GENERAL

1. Since the submission of Malta's tenth, eleventh and twelfth periodic reports, there have been no new cases or allegations of discrimination on the ground of race, colour or ethnic origin, whether in the courts or in the public media. No cases regarding discriminatory practice have been put forward in any international forum, including the Committee on the Elimination of Racial Discrimination.

2. The State of Malta has had no incident that could imply any sort of undertaking in any act or practice of racial discrimination against persons, groups of persons or institutions. All public authorities and public institutions act in conformity with this obligation. The education system, the judicial system, the mass media network, the social system, the complex system of intercultural communication between Maltese nationals and foreigners reflect this excellent promotion of understanding among all races.

3. Malta has never had a Constitutional Court case challenging any law or administrative action based on racial prejudice or discrimination.

4. Previous reports have already indicated the possibilities of redress for a person acting on his or another's behalf. These possibilities still exist and, apart from redress before the European Court of Human Rights, individuals and groups now have the possibility of recourse to the Human Rights Committee after Malta ratified the International Covenant on Civil and Political Rights in 1990, as well as its Optional Protocols. Malta has also recently submitted its declaration pursuant to article 14 of the Convention, which, in its substance, gives States parties to the Convention, the facility to declare that they recognize the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State party of the rights set forth in the Convention.

5. Legislation on the matter has been described in previous reports and no further Acts have been published. As can be seen by the demographic data annexed to this report, there exists no significant ethnic minority as such which can have warranted fears as to the safeguarding of their rights. It is for this reason that the Maltese Government does not feel the need to enact new ad hoc legislation. It is felt that there exist sufficient legal guarantees for the possibility to lead a social life free of racial discrimination.

6. As stated in previous reports, there exist other indicators of the existence or absence of racial discrimination in Malta. Maltese citizens, who form the overwhelming majority of the population, are traditionally known for their acceptance of different cultures and ideologies. There does not exist any concerted action or programme which is intended to promote racial hatred or divisions. This fact may be ascertained in individuals or groups, as well as in any of the governmental and non-governmental agencies and institutions which exist in Malta. In this light, if any case of such concerted action were to arise, the provisions of the Seditious Propaganda (Prohibition) Ordinance may be deemed to be enough to prosecute those offenders concerned.

This Ordinance establishes the criminal offence of the importation, publication, possession and distribution of seditious material - defining seditious matter as

> "any written or printed matter, sign or visible representation contained in any newspaper, poster, book, letter, parcel or other document and any gramophone record or recorded tape which is likely or may have a tendency directly or indirectly, whether by inference, suggestion, allusion, metaphor, implication or otherwise
>
> "(e) to promote feelings of ill will and hostility between different classes or races of the inhabitants of Malta."

No prosecution of persons under this provision has been made since the last report.

II. INFORMATION IN RELATION TO ARTICLES 2 TO 7 OF THE CONVENTION

Article 2

7. The position has remained the same as that described in the last report. Since Malta has ratified the International Covenant on Civil and Political Rights, individuals and groups, besides the possibility of recourse to the constitutional courts and the European Court of Human Rights, may also apply to the Human Rights Committee for redress. This may be done, however, provided that a petition has not been sent simultaneously to the European Court and the Committee, in light of the Government's reservation entered upon the ratification of the Optional Protocol to the Covenant. As mentioned in paragraph 4 above, the Government has also implemented article 14 of the Covenant. The Declaration which was submitted reads as follows:

> "Malta declares that it recognizes the competence of the Committee to receive and consider communications from individuals subject to the jurisdiction of Malta who claim to be victims of a violation by Malta of any of the rights set forth in the Convention which results from situations or events occurring after the date of adoption of the present declaration, or from a decision relating to situations or events occurring after that date.
>
> "The Government of Malta recognizes that competence on the understanding that the Committee on the Elimination of Racial Discrimination shall not consider any communication without ascertaining that the same matter is not being considered or has already been considered by another international body of investigation or settlement."

8. Malta is also actively considering the enactment of certain laws that could satisfy the requirements of article 4.

Article 3

9. Malta has consistently continued to condemn racial discrimination and particularly the practice of apartheid. Following the adoption of

Security Council resolution 919 (1994) of 25 May 1994 and the establishment in South Africa of a non-racial and democratic Government, Malta has established diplomatic relations with South Africa.

Article 4

10. In conformity with the provisions of this article, Act 10 of 1996 has amended the Press Act and inserted the following provision:

> "Whoever, by any means mentioned in Section 3 of this Act, shall threaten, insult or expose to hatred, prosecution, or contempt, a person or group of persons because of their race, creed, colour, nationality, or national or ethnic origin, shall be liable on conviction to imprisonment for a term not exceeding 3 months and to a fine."

Section 3 of the Act stipulates that the offences mentioned in this Part of the Act are committed by means of the publication or distribution in Malta of printed matter, from whatsoever place such matter may originate, or by means of any broadcast.

11. A specific measure which will be implemented in the near future can be found in the new Police Code (Malta Police Force Act, 1997), which is presently before Parliament for discussion. This legislation provides an "ad hoc" article in the Second Schedule entitled "Offences against Discipline" which reads as follows:

> "Discriminatory Treatment
>
> "Without a good sufficient and legal cause, treats any person or persons in a discriminatory manner, whether favourably or adversely."

Once this provision comes into effect, police officers violating this provision would now be committing a disciplinary offence.

12. As already indicated above, the Government has submitted the appropriate declaration under article 14 and at the same time has undertaken steps to ensure that the required framework within the terms envisaged in article 4 is eventually established. In fact, amendments have been included in a draft bill to amend the Criminal Code, which will cater for the obligations imposed by article 4.

13. Furthermore, the Government of Malta has set up the Office of the Ombudsman with the function to investigate administrative actions taken by or on behalf of government departments, local councils and other public authorities. The Ombudsman has extensive powers to implement mandates approved by law. The Ombudsman will ensure the protection of the individual against any abuse and will see that the administration is just and fair in its decision. This will continue to upgrade and strengthen protection of democracy and further promote freedom and justice in an effective and efficient manner.

14. During 1996 and 1997, no complaints were received by the Ombudsman on grounds of racial discrimination. The Office has also cooperated with the

Emigrants' Commission which acts as the local representative of the United Nations High Commissioner for Refugees (UNHCR) to safeguard the interests of refugees living in Malta until they are able to find a country willing to accept them permanently. No formal complaints have been received from refugees but as according to current policy they are not issued with a work permit if their skill or trade can be performed by unemployed Maltese nationals, the good offices of the Ombudsman are sometimes availed of by the Emigrants' Commission to assist refugees in obtaining temporary work permits in justified cases.

15. The Ombudsman is also empowered to consider cases on his own initiative. During the last two years he has monitored the question of refugees closely and on his own initiative the rights of refugees/asylum seekers were discussed by the Council of Europe Human Rights Round Table with European Ombudsmen held in Malta from 7 to 9 October 1998.

16. As already stated in previous reports, it is important to reiterate the fact that racial discrimination as an organized and consistent policy is widely unaccepted in Maltese society. The Government, through educational, cultural and similar channels, continues to consistently enhance the legal awareness of each and every person living in Malta, thus enhancing the awareness that it is important for each member of the public to know that he is entitled to go to court if he considers himself to have been, or is liable to become a victim of racial discrimination.

Article 5

17. Anti-racial discrimination provisions are covered both in chapter 4 of the Maltese Constitution and in Act XIV of 1987, which incorporates the provisions of the European Convention on Human Rights (ECHR) into Maltese law. It is relevant to note at this stage that chapter 4 of the Constitution cannot be amended except by a two-thirds majority of Parliament. This is a very difficult situation to achieve, due not only to the rigid bipolar structure present in Parliament, but also emanating from the fact that in Malta, Governments rarely enjoy a majority of more than five seats.

18. As regards Act No. XIV of 1987, article 3 (1), which is the focal point of the Act, provides that: "The Human Rights and Fundamental Freedoms shall be, and be enforceable as, part of the Laws of Malta." Article 3 also provides that: "Where any ordinary law is inconsistent with the Human Rights and Fundamental Freedoms, the said Human Rights and Fundamental Freedoms shall prevail, and such ordinary law, shall, to the extent of the inconsistency, be void."

19. Besides accepting to enforce these rights within the State, Malta also agreed to provide an external procedure. Article 25 of the European Convention of Human Rights provides that: "the Commission may receive petitions, from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention, provided that the High Contracting Party against which the complaint has been lodged has declared that it recognizes the competence of the Commission to receive such petitions." Through the latter procedure, Malta has undertaken a self-imposed

international obligation, permitting its organs to be controlled by giving the individual access to an international independent and impartial tribunal to remedy the violation of his fundamental human rights by the State.

20. Before the ratification of the aforementioned article and the incorporation of the whole Convention, the individual in Malta was in a very limited position, in that if he felt that his basic human rights as stated in the Constitution were being violated he could take recourse to the local courts, but if he failed to obtain redress from the local authorities there was nothing he could do to remedy the situation. After the incorporation of the Convention into Maltese legislation, the individual has two avenues for redress, one internal and another external. According to the internal procedure the individual looks for redress for his breach of rights within the State, in the mechanics of the Constitution. With the external procedure the person applies to the agencies of the ECHR. By the latter procedure the individual is being given access to an international independent and impartial tribunal to remedy the violation of his fundamental human rights by the State.

21. All the rights specified in the Maltese Constitution and in Act XIV of 1987 (incorporating the human rights provisions of the European Convention on Human Rights) are subject to non-discrimination provisions. Article 32 of the Constitution reads as follows:

> "Whereas every person in Malta is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely
>
> "(a) life, security of the person, the enjoyment of property and the protection of the law;
>
> "(b) freedom of conscience, of expression and of peaceful assembly and association; and
>
> "(c) respect for his private and family life,
>
> the subsequent provisions of this chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in those provisions being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest."

This provision implies that everyone in Malta has his rights protected, irrespective of his beliefs and racial identity.

22. Section 45 of the Constitution specifically ensures protection of the individual from discrimination on the grounds of race. Section 45 states the following:

"45. (1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

"(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

"(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

"(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision:

"(a) for the appropriation of public revenues or other public funds; or

"(b) with respect to persons who are not citizens of Malta; or

"(c) with respect to adoption, marriage, dissolution of marriage, burial, devolution of property on death or any matters of personal law not herein before specified; or

"(d) whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description and to any other provision of this Constitution, is reasonably justifiable in a democratic society; or

"(e) for authorizing the taking during a period of public emergency of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency;

"Provided that paragraph (c) of this subsection shall not apply to any law which makes any provision that is discriminatory, either of itself or in its effect by affording different treatment to different persons attributable wholly or mainly to their respective description by sex.

"(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision:

"(a) with respect to qualifications for service or conditions of service in any disciplined force; or

"(b) with respect to qualifications (not being qualifications specifically relating to sex) for service as a public officer or for service of a local government authority or a body corporate established for public purposes by any law.

"(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorized to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.

"(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision (not being provisions specifically relating to sex), whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 38, 40, 41, 42 and 44 of this Constitution, being such a restriction as is authorized by section 38 (2), 40 (2), 41 (2), 42 (2) or 44 (3).

"(8) Nothing in subsection (2) of this section shall affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

"(9) A requirement, however made, that the Roman Catholic Apostolic Religion shall be taught by a person professing that religion shall not be held to be inconsistent with or in contravention of this section.

"(10) Until the expiration of a period of two years commencing on 1 July 1991, nothing contained in any law made before 1 July 1991, shall be held to be inconsistent with the provisions of this section, insofar as that law provides for different treatment to different persons attributable wholly or mainly to their respective description by sex.

"(11) Nothing in the provisions of this section shall apply to any law or anything done under the authority of a law, or to any procedure or arrangement, insofar as such law, thing done, procedure or arrangement provides for the taking of special measures aimed at accelerating de facto equality between men and women, and insofar only as such measures, taking into account the social fabric of Malta, are shown to be reasonably justifiable in a democratic society."

23. As pointed out in previous reports, it is important to reiterate that all articles regulating the protection of the individual's fundamental rights and freedoms are not based on citizenship or nationality but are based precisely on the concept of the person (arts. 33-43). Thus, the provisions covering protection of the law, as provided in article 39, are valid and enforceable by any person whatsoever. The only exception to this rule is

article 44 regulating the mode of protection of the freedom of movement. Article 44 in fact formally gives this protection specifically to citizens of Malta. "No citizen of Malta shall be deprived of his freedom of movement". However, subsection 5 of article 44 gives the right of review to any person whose freedom of movement has been restricted.

Article 5 (a)

24. In Malta it is not possible to discriminate on grounds of race in matters relating to access to a tribunal. This would be contrary to articles 32 and 45 of the Constitution and article 6 of the European Convention on Human Rights combined with article 14 of the European Convention on Human Rights.

25. As stated before, article 45 states that no law shall make any provision that is discriminatory either of itself or in its effect. This provides ample legal protection from discrimination on the ground of race. The same article states that no person shall be treated in a discriminating manner by any person acting by virtue of any written law or in the performances of the functions of any public office or any public authority.

26. There has been no case law where anybody has filed a constitutional application claiming racial discrimination because he has not been granted access to a tribunal on grounds of race.

Article 5 (b)

27. Security of person without any form of discrimination is guaranteed by article 34 of the Constitution, combined with articles 32 and 45 of the same instrument (described above); and article 5 combined with article 14 of the European Convention on Human Rights.

28. Article 34 states the following:

"34. (1) No person shall be deprived of his personal liberty save as may be authorized by law in the following cases, that is to say

"(a) in consequence of his unfitness to plead to a criminal charge;

"(b) in execution of the sentence or order of a court, whether in Malta or elsewhere, in respect of a criminal offence of which he has been convicted;

"(c) in execution of the order of a court punishing him for contempt of that court or of another court or tribunal or in execution of the order of the House of Representatives punishing him for contempt of itself or of its members or for breach of privilege;

"(d) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by Law;

"(e) for the purpose of bringing him before a court in execution of the order of a court or before the House of Representatives in execution of the order of that House;

"(f) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence;

"(g) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;

"(h) for the purpose of preventing the spread of an infectious or contagious disease;

"(i) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community; or

"(j) for the purpose of preventing the unlawful entry of that person into Malta, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Malta or the taking of proceedings relating thereto or for the purpose of restraining that person while he is being conveyed through Malta in the course of his extradition or removal as a convicted prisoner from one country to another.

"(2) Any person who is arrested or detained shall be informed, at the time of his arrest or detention, in a language that he understands, of the reasons for his arrest or detention:

"Provided that if an interpreter is necessary and is not readily available or if it is otherwise impracticable to comply with the provisions of this subsection at the time of the person's arrest or detention, such provisions shall be complied with as soon as practicable.

"(3) Any person who is arrested or detained

"(a) for the purpose of bringing him before a court in execution of the order of a court; or

"(b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence, and who is not released, shall be brought not later than forty-eight hours before a court; and if any person arrested or detained in such a case as is mentioned in paragraph (b) of this subsection is not tried within a reasonable time, then, without prejudice to any further proceedings which may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

"(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefore from that person.

"(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorizes the taking during such a period of public emergency as is referred to in paragraph (a) or (e) of subsection (2) of section 47 of this Constitution of measures that are reasonably justifiable for the purpose of dealing with the situation that exists during that period of public emergency.

"(6) If any person who is lawfully detained by virtue only of such a law as is referred to in the last foregoing subsection so requests at any time during the period of that detention not earlier than six months after he last made such a request during that period, his case shall be reviewed by an independent and impartial tribunal established by law and composed of a person or persons each of whom holds or has held judicial office or is qualified to be appointed to such office in Malta.

"(7) On any review by a tribunal in pursuance of the last foregoing subsection of the case of any detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by whom it was ordered, but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations."

There has been no case law concerning the above provisions on the ground of racial discrimination.

29. Sections 214 to 220 of the Criminal Code define the crimes of Wilful Offences against the Person as follows:

"214. Whosoever without the intent to kill or to put the life of any person in manifest jeopardy, shall cause harm to the body or health of another person, or shall cause to such other person a mental derangement, shall be guilty of bodily harm.

"215. A bodily harm may be either grievous or slight.

"216. (1) A bodily harm is deemed to be grievous and is punishable with imprisonment for a term of three months to three years:

"(a) if it can give rise to danger of:

"(i) loss of life; or

"(ii) any permanent debility of the health or permanent functional debility of any organ of the body, or

"(iii) any permanent defect in any part of the physical structure of the body; or

"(iv) any permanent mental infirmity;

"(b) if it causes any deformity or disfigurement in the face; neck or either of the hands of the person injured;

"(c) if it is caused by any wound which penetrates into one of the cavities of the body; without producing any of the effects mentioned in section 218;

"(d) if it causes any mental or physical infirmity lasting for a period of thirty days or more; or if the party injured is incapacitated, for a like period, from attending to his occupation;

"(e) if, being committed on a woman with child, it hastens delivery.

"(2) Where the person injured shall have recovered without ever having been, during the illness in actual danger of life or of the effects mentioned in paragraph (a) of subsection (1) of this section, it shall be deemed that the harm could have given rise to such danger only where the danger was probable in view of the nature or the natural consequences of the harm.

"217. A grievous bodily harm is punishable with imprisonment for a term from five months to four years if it is committed with arms proper, or with a cutting or pointed instrument, or by means of any explosive, or any burning or corrosive fluid or substance:

"Provided that where the offence is committed by means of any explosive fluid or substance the minimum punishment shall be imprisonment for two years and the provisions of the Probation of Offenders Act 1957 shall not apply.

"218. (1) A grievous bodily harm is punishable with imprisonment for a term from nine months to nine years:

"(a) if it causes any permanent debility of the health or any permanent functional debility of any organ of the body, or any permanent mental infirmity;

"(b) if it causes any serious and permanent disfigurement of the face, neck, or either of the hands of the person injured;

"(c) if being committed on a woman with child, it causes miscarriage.

"(2) Any debility of the health of any functional debility of any organ of the body, and any mental infirmity, serious disfigurement, or defect shall be deemed to be permanent even when it is probably so.

"(3) The punishment for the offences referred to in subsection (1) of this section shall be that established in subsection (2) of section 312 if the bodily harm is committed by means of an explosive fluid or substance.

"219. The punishments laid down in sections 216 and 218 shall be decreased by one or two degrees if a supervening accidental cause has contributed to produce the effects mentioned in the said sections.

"220. (1) Whosoever shall be guilty of a grievous bodily harm from which death shall ensue solely as a result of the nature or the natural consequences of the harm and not of any supervening accidental clause, shall be liable:

"(a) to imprisonment for a term from six to twenty years, if death shall ensue within forty days to be reckoned from the midnight immediately preceding the crime;

"(b) to imprisonment for a term of four to twelve years, if the death shall ensue after the said forty days but within one year to be reckoned as above.

"(2) If death shall ensue as a result of a supervening accidental cause and not solely as a result of the nature or the natural consequences of the harm, the offender shall, on conviction, be liable to imprisonment for a term from three to nine years.

"(3) If the bodily harm is inflicted within the limits of the territorial jurisdiction of Malta, the crime shall be held to have been completed within those limits, even if the death of the person injured shall occur outside those limits."

30. The right to be protected by the State against violence or bodily harm is guaranteed by article 36 of the Constitution combined with articles 45 and 32; together with article 3 of the ECHR combined with article 14.

31. Article 36 of the Constitution states the following:

"36. (1) No person shall be subjected to inhuman or degrading punishment or treatment.

"(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorizes the infliction of any description of punishment which was lawful in Malta immediately before the appointed day.

"(3) (a) no law shall provide for the imposition of collective punishments;

"(b) nothing in this subsection shall preclude the imposition of collective punishments upon the members of a disciplined force in accordance with the law regulating the discipline of that force."

32. In addition, section 139A of the Criminal Code (reflecting the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) states as follows:

"Any public officer or servant or any other person acting in an official capacity who intentionally inflicts on a person severe pain or suffering, whether physical or mental

"(a) for the purpose of obtaining from him or a third person information or a confession; or

"(b) for the purpose of punishing him for an act he or a third person has committed or is suspected of having committed; or

"(c) for the purpose of intimidating him or a third person or of coercing him or a third person to do, or to omit to do any act; or

"(d) for any reason based on any discrimination of any kind, shall, on conviction, be liable to imprisonment for a term from five to nine years;

"provided that no offence is committed where pain or suffering arises only from, or is inherent in or incidental to, lawful sanctions or measures:

"provided further that nothing in this section shall affect the applicability of other provisions of this code or of any other law providing for a higher punishment."

33. Section 5 (g) of the Criminal Code grants jurisdiction on the basis of the territoriality principle to the courts of Malta in the above case, stipulating: "A criminal action may be prosecuted in Malta, according to the laws thereof, against any person who being in Malta, shall be a principal or accomplice in any of the crimes referred to in subsection (2) of section 87, or sections 139A or 298, although the crimes shall have been committed outside Malta". Once again, there has been no case law on this point.

Article 5 (c)

34. This provision is covered by sections 57 and 58 of the Constitution.

35. The operative part of section 57 states the following:

"Subject to the provisions of section 58 of this Constitution, a person shall not be qualified to be registered as a voter for the election of members of the House of Representatives if, and shall not be qualified to be so registered unless:

"(a) he is a citizen of Malta;

"(b) he has attained the age of eighteen years; and

"(c) he is resident in Malta and has during the eighteen months immediately preceding his registration been a resident for a continuous period of six months or for periods amounting in the aggregate to six months."

36. Section 58 states that:

"No person shall be qualified to be registered as a voter for the election of members of the House of Representatives if:

"(a) he is interdicted or incapacitated for any mental infirmity by a court in Malta or is otherwise determined in Malta to be of unsound mind;

"(b) he is under sentence of death imposed on him by any court in Malta or is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended; or

"(c) he is disqualified for registration as a voter by or under any law for the time being in force in Malta by reason of his having been convicted of any offence connected with the election of members of the House of Representatives."

37. Section 15 of the General Election Act in fact stipulates that "a person shall be entitled to be registered as a voter for the election of Members of the House if, and shall not be entitled to be registered unless, he has the qualification required by section 57 of the Constitution and provided he is not so disqualified in terms of section 58 of the Constitution or in accordance with the provisions of this Act".

38. As regards local government, the electoral process concerning the election of representatives to the 67 local councils of the Maltese Islands is governed by the Local Councils Act, which in section 5 specifies that every citizen of Malta whose name appears in the last published Electoral Register and who has not been convicted of any offence connected with the election of members of Local Councils shall be entitled to vote at elections of Local Councils.

39. Article 45, in its blanket prohibition of any laws that are discriminatory either of themselves or in their effect, in combination with article 32 of the Constitution, is also relevant in this respect. This right is also guaranteed through article 3 of the Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (which was also incorporated and is enforceable as part of the laws of Malta), combined with article 14 of the ECHR. Once again, there has been no case law on this ground.

Article 5 (d) (i)

40. The right to freedom of movement is guaranteed through the existence of article 44 and article 45 of the Constitution of Malta.

41. Article 44 states the following:

"44. (1) No citizen of Malta shall be deprived of his freedom of movement, and for the purpose of this section the said freedom means the right to move freely throughout Malta, the right to reside in any part of Malta, the right to leave and the right to enter Malta.

"(2) Any restriction on a citizen's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

"(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:

"(a) for the imposition of restrictions that are reasonably required in the interests of defence, public safety, public order, public morality or decency, or public health and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;

"(b) for the imposition of restrictions on the freedom of movement of any citizen of Malta who is not a citizen by virtue of section 22 (1) or 25 (1) of this Constitution;

"(c) for the imposition of restrictions upon the movement or residence, within Malta of public officers; or

"(d) for the imposition of restrictions on the right of any person to leave Malta that are reasonably required in order to secure the fulfilment of any obligation imposed on that person by law and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

"(4) For the purposes of this section any person:

"(a) who has emigrated from Malta (whether before on or after the appointed day) and, having been a citizen of Malta by virtue of section 22 (1) or 25 (1) of this Constitution, has ceased to be such a citizen; or

"(b) who emigrated from Malta before the appointed day and, but for his having ceased to be a citizen of the United Kingdom and Colonies before that day, would have become a citizen of Malta by virtue of section 22 (1) of this Constitution; or

"(c) who is the wife of a person mentioned in paragraph (a) or (b) of this subsection or of a person who is a citizen of Malta by virtue of section 22 (1) or 25 (1) of this Constitution and is living with that person or is the child under twenty-one years of age of such a person, shall be deemed to be a citizen of Malta by virtue of section 22 (1) or 25 (1) of this Constitution.

"(5) If any person whose freedom of movement has been restricted by virtue of such a provision as is referred to in subsection 3 (a) of this section so requests at any time during the period of that restriction not earlier than six months after the order was made or six months after he last made such request, as the case may be, his case shall be reviewed by an independent and impartial tribunal established by law composed of a person or persons each of whom holds or has held judicial office or is qualified to be appointed to such office in Malta:

"Provided that a person whose freedom of movement has been restricted by virtue of a restriction which is applicable to persons generally or to general classes of persons shall not make a request under this subsection unless he has first obtained the consent of the Civil Court, First Hall.

"(6) On any review by a tribunal in pursuance of this section of the case of a person whose freedom of movement has been restricted the tribunal may make recommendations concerning the necessity or expediency of continuing the restriction to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations."

There has been no case law concerning racial discrimination in connection with the above provisions.

Article 5 (d) (ii)

42. See above paragraph in relation to article 5 (d) (i). An additional positive development in this respect is the deletion from the Codes of Malta of the Title on "Impediment of Departure" as applicable to physical persons, i.e. a court action which could prohibit a person from departing the country for such offences as non-payment of debts or non-support of an estranged wife or children. Through articles 32 and 45 of the Constitution, the latter amendment is applicable in a non-discriminatory manner. There has been no case law concerning racial discrimination with respect to the foregoing provisions.

Article 5 (d) (iii)

43. Chapter III of the Constitution and the Citizenship Act are, through the operation of article 32, applicable to all persons in a non-discriminatory manner. One of the most salient provisions of chapter III in this respect is article 26, which provides that:

"(1) Any person who on or after the appointed day marries a person who is or becomes a citizen of Malta shall be entitled, upon making application in such manner as may be prescribed and upon taking the oath of allegiance, to be registered as a citizen of Malta.

"(2) With effect from the 1 August 1989, no person entitled to be registered as a citizen of Malta shall be entitled, to be registered as a citizen of Malta in virtue of this section unless:

"(a) the Minister is satisfied that the grant of citizenship to such person is not contrary to the public interest; and on the date of the application such person was still married to a citizen of Malta or is the widow or widower of a person who was a citizen of Malta at the time of his or her death."

There has been no case law concerning racial discrimination with respect to the above-mentioned provision.

Article 5 (d) (iv)

44. The right to marriage and choice of spouse is guaranteed through the provisions of the Marriage Act in combination with article 32 of the Constitution.

45. Chapter 255 of the Laws of Malta (Marriage Act) provides for the regulation of marriages and for matters connected thereto. The Act does not contain any provisions concerning marriage and choice of spouse that are discriminatory either of themselves or in their effect. The restrictions on marriage contained in the Act are basically the following, as stipulated in sections 3-6 of the Act:

(a) A marriage contracted between persons either of whom is under the age of 16 shall be void;

(b) A marriage contracted between persons either of whom is incapable of contracting by reason of infirmity of mind, whether interdicted or not, shall be void;

(c) A marriage contracted between:

(i) An ascendant and a descendant in the direct line;

(ii) A brother and a sister, whether of the full or half-blood;

(iii) Persons related by affinity in the direct line; or

(iv) The adopter and the adopted person, or a descendant or the husband or the wife, of the adopted person,

shall, whether the relationship aforesaid derives from legitimate or illegitimate descent, be void.

(d) A marriage contracted between persons either of whom is bound by a previous marriage shall be void.

46. The right to marriage without any form of discrimination is also provided for through article 12 of the ECHR, in combination with article 14 of the same Convention.

47. There has been no case law concerning racial discrimination in connection with the above-mentioned provisions.

Article 5 (d) (v)

48. The right to own property is guaranteed through article 37 of the Constitution in combination with article 32, together with article 1 of Protocol No. 1 to the ECHR, in combination with article 14 of the European Convention as incorporated into Maltese legislation.

49. Article 37 of the Constitution states the following:

"37. (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where provision is made by a law applicable to that taking of possession or acquisition

"(a) for the payment of adequate compensation;

"(b) securing to any person claiming such compensation a right of access to an independent and impartial court or tribunal established by law for the purpose of determining his interest in or right over the property and the amount of any compensation to which he may be entitled, and for the purpose of obtaining payment of that compensation; and

"(c) securing to any party to proceedings in that court or tribunal relating to such a claim a right of appeal from its determination to the Court of Appeal in Malta:

"Provided that in special cases Parliament may, if it deems it appropriate so to act in the national interest, by law establish the criteria which are to be followed, including the factors and other circumstances to be taken into account, in the determination of the compensation payable in respect of property compulsorily taken possession of or acquired; and in any such case the compensation shall be determined and shall be payable accordingly.

"(2) Nothing in this section shall be construed as affecting the making or operation of any law so far as it provides for the taking of possession or acquisition of property:

"(a) in satisfaction of any tax, rate or due;

"(b) by way of penalty for, or as a consequence of, breach of the law, whether under civil process or after conviction of a criminal offence;

"(c) upon the attempted removal of the property out of or into Malta in contravention of any law;

"(d) by way of the taking of a sample for the purposes of any law;

"(e) where the property consists of an animal upon its being found trespassing or straying;

"(f) as an incident of a lease, tenancy, licence, privilege or hypothec, mortgage, charge, bill of sale, pledge or other contract;

"(g) by way of the vesting or administration of property on behalf and for the benefit of the person entitled to the beneficial interest therein, trust property, enemy property or the property of persons adjudged bankrupt or otherwise declared bankrupt or insolvent, persons of unsound mind, deceased persons, or bodies corporate or unincorporated in the course of being wound up or liquidated;

"(h) in the execution of judgements or orders of courts;

"(i) by reason of its being in a dangerous state or injurious to the health of human beings, animals or plants;

"(j) in consequence of any law with respect to the limitation of actions, acquisitive prescription, derelict land, treasure trove, mortmain of the rights of succession competent to the Government of Malta; or

"(k) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon:

"(i) of work of soil conservation or the conservation of other natural resources of any description or of war damage reconstruction; or

"(ii) of agricultural development or improvement which the owner or occupier of the land has been required, and has without reasonable and lawful excuse refused or failed to carry out.

"(3) Nothing in this section shall be construed as affecting the making or operation of any law so far as it provides for vesting in the Government of Malta the ownership of any underground minerals, water or antiquities.

"(4) Nothing in this section shall be construed as affecting the making or operation of any law for the compulsory taking of possession in the public interest of any property or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate which is established for public purposes by any law and in which no monies have been invested other than monies provided by any legislature in Malta."

There has been no case law concerning racial discrimination in connection with the above provisions.

Article 5 (d) (vi)

50. The right to inherit is indirectly guaranteed through article 32 of the Constitution, which guarantees the right to every person in Malta, "whatever his race, place of origin, political opinions, colour, creed or sex", to "life, liberty, security of the person, the enjoyment of property and the protection of the law".

51. The provisions of the Civil Code are also relevant in this respect. Sections 600, 601, 605 and 610 (reproduced below) specify, in the case of testate succession, those persons who are not capable of receiving by will.

"600. (1) Those who, at the time of the testator's death or of the fulfilment of a suspensive condition on which the disposition depended, were not yet conceived are incapable of receiving by will.

"(2) The provisions of this section shall not apply to the immediate children of a determinate person who is alive at the time of the death of testator, nor to persons who may be called to the enjoyment of a foundation."

"601. (1) Those who are not born viable are incapable of receiving by will.

"(2) In case of doubt, those who are born alive are presumed to be viable."

"605. (1) Where any person has -

"(a) wilfully killed or attempted to kill the testator;

"(b) charged the testator before a competent authority with a crime punishable with imprisonment, of which he knew the testator to be innocent; or

"(c) compelled, or fraudulently induced the testator to make his will, or to make or alter any testamentary disposition; or

"(d) prevented the testator from making a new will, or from revoking the will already made, or suppressed, falsified, or fraudulently concealed the will

"he shall be considered as unworthy, and, as such, shall be incapable of receiving property under a will.

"(2) The provisions of this section shall also apply to any person who has been an accomplice in any of the said acts."

"610. (1) Nor can the notary by whom a public will has been received, or the person by whom a secret will has been written out, benefit in any way by any such will, unless immediately after the disposition made in favour of the said notary or person there be affixed the signature of the testator."

52. In the case of intestate succession, the relevant provisions are the following:

> "788. Where there is no valid will, or where the testator has not disposed of the whole of his estate, or where the heirs-institute are unwilling or unable to accept the inheritance, or where the right of accretion among the co-heirs does not arise; intestate succession takes place, wholly or in part, by the operation of the law."
>
> "789. Intestate succession is granted in favour of the descendants, the ascendants, the collateral relatives, the illegitimate children and the spouse of the deceased, and the Government of Malta, in the order and according to the rules hereafter laid down."
>
> "796. Persons who are incapable or unworthy of receiving under a will, for the causes stated in this Code, are also incapable or unworthy of succeeding ab intestato."
>
> "797. Persons who, by fraud or by violence, shall have prevented the deceased from making a will, shall also be, as unworthy, incapable of succeeding ab intestate."

53. There has been no case law concerning racial discrimination in connection with the above-mentioned provisions.

54. Because of article 15 of the Constitution and article 14 of the European Convention together with article 1 of Protocol No. 1 to the said Convention it is impossible to discriminate on the grounds of race in both testate and intestate succession. As a matter of interest the First Hall of the Civil Court decided that it is not even possible to discriminate between legitimate and illegitimate children and the Civil Code will be amended accordingly.

Article 5 (d) (vii)

55. The right to freedom of thought, conscience and religion is guaranteed through article 40 of the Constitution, combined with article 32 of the same law, and article 9 of the ECHR combined with article 14 of the Convention, together with article 2 of Protocol No. 1 to the European Convention.

56. Article 40 of the Constitution declares that:

> "40. (1) All persons in Malta shall have full freedom of conscience and enjoy the free exercise of their respective mode of religious worship.
>
> "(2) No person shall be required to receive instruction in religion or to show knowledge or proficiency in religion if, in the case of a person who has not attained the age of sixteen years, objection to such requirement is made by the person who according to law has authority over him and, in any other case, if the person so required objects thereto:

"Provided that no such requirement shall be held to be inconsistent with or in contravention of this section to the extent that the knowledge of, or the proficiency or instruction in, religion is required for the teaching of such religion, or for admission to the priesthood or to a religious order, or for other religious purposes and except so far as that requirement is shown not to be reasonably justifiable in a democratic society.

"(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1), to the extent that the law in question makes provision that is reasonably required in the interests of public safety, public order, public morality or decency, public health, or the protection of the rights and freedoms of others, and except so far as that provision or, as the case may be, the thing done under the authority thereof, is shown not to be reasonably justifiable in a democratic society."

57. In practice, the Government grants subsidies only to Roman Catholic schools. Students in government schools may opt to decline instruction in Roman Catholicism.

58. There has been no case law concerning racial discrimination in connection with the above-mentioned provisions.

Article 5 (d) (viii)

59. The right to freedom of opinion and expression is guaranteed through article 41 of the Constitution combined with article 32 of the same document, and article 10 of the ECHR in combination with article 14 of the same Convention, together with article 2 of Protocol No. 1 to the European Convention.

60. Article 41 states the following:

"41. (1) Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, including freedom to hold opinion without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

"(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that the law in question makes provision -

"(a) that is reasonably required -

"(i) in the interests of defence, public safety, public order, public morality or decency, or public health; or

"(ii) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, protecting the privileges of Parliament, or regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication, public exhibitions or public entertainment; or

"(b) that imposes restrictions upon public officers,

"and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

"(3) Anyone who is resident in Malta may edit or print a newspaper or journal published daily or periodically:

"Provided that provision may be made by law -

"(a) prohibiting or restricting the editing or printing of any such newspaper or journal by persons under twenty-one years of age; and

"(b) requiring any person who is the editor or printer of any such newspaper or journal to inform the prescribed authority to that effect and of his age and to keep the prescribed authority informed of his place of residence.

"(4) Where the police seize any edition of a newspaper as being the means whereby a criminal offence has been committed they shall within twenty-four hours of the seizure bring the seizure to the notice of the competent court and if the court is not satisfied that there is a prima facie case of such offence, that edition shall be returned to the person from whom it was seized.

"(5) No person shall be deprived of his citizenship under any provisions made under Section 301 (1) (b) of this Constitution or of his juridical capacity by reason only of his political opinions."

61. In practice, an independent press, an effective judiciary, and a functioning democratic political system combine to ensure freedom of speech and press, including academic freedom.

62. There has been no case law concerning racial discrimination in connection with the above-mentioned provisions.

Article 5 (d) (ix)

63. The right to freedom of assembly and association is guaranteed through article 42 of the Constitution in combination with article 32, together with article 11 of the ECHR combined with article 14.

64. Article 42 stipulates:

"42. (1) Except with his own consent or by way of parental discipline no person shall be hindered in the enjoyment of his freedom of peaceful assembly and association, that is to say, his right peacefully to assemble freely and associate with other persons and in particular to form or belong to trade or other unions or associations for the protection of his interests.

"(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

"(a) that is reasonably required -

"(i) in the interests of defence, public safety, public order, public morality or decency, or public health; or

"(ii) for the purpose of protecting the rights or freedoms of other persons; or

"(b) that imposes restrictions upon public officers,

"and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

"(3) For the purposes of this section, any provision in any law prohibiting the holding of public meetings or demonstrations in any one or more particular cities, towns, suburbs or villages shall be held to be a provision which is not reasonably justifiable in a democratic society."

There has been no case law concerning racial discrimination in connection with the above-mentioned provisions.

Article 5 (e) (i)

65. The right to work is enshrined in article 7 of the Constitution which declares that: "The State recognizes the right of all citizens to work and shall promote such conditions as will make this right effective."

66. Through article 12 of the Constitution, the State is also bound to provide for the professional or vocational training and advancement of workers. The Constitution also lays down in article 13 that the maximum number of hours of work per day shall be fixed by law and that the worker is entitled to a weekly day of rest and to annual holidays with pay which cannot be renounced. The Department of Labour effectively enforces these requirements.

67. In addition to the above, the Conditions of Employment (Regulation) Act (CERA) protects workers by:

(a) Regulating employment contracts;

(b) Laying down minimum standards;

(c) Providing tripartite machinery (Wages Council and the Labour Board) for regulating minimum conditions for employment through Wage Regulation Orders or by National Standard Orders, as applicable;

(d) Protects employees against unfair dismissal. An employee who alleges that he/she has been unfairly dismissed has access to the Industrial Tribunal, which has the power to reinstate the applicant or award compensation if the claim is upheld;

(e) A system of Wage Council Orders covering between them practically all employees in the private sector regulates minimum conditions of employment, whilst National Standard Orders, applicable to all sectors, supplement the Wage Council Regulation Orders by laying down national standard conditions of work. Cost of living increases determined in accordance with agreed procedures are applied by National Standard Order or CERA Regulation and are applicable to all employees;

(f) The Wage Regulation Orders and National Standard Orders provide a base from which trade unions may start bargaining collectively with employers in order to agree on collective agreements. All these instruments together constitute the recognized conditions of employment in Malta.

68. As regards the issue of safe and healthy working conditions, the Promotion of Occupational Health and Safety Act was passed in 1994. It established the Commission for the Promotion of Occupational Health and Safety which is made up of persons involved in the administration of health-related labour issues, as well as representatives from the employment training corporation, the police force, the unions and the employers' associations. The Commission has consultative, informative and quasi-judicial functions. It may advise the Minister on regulations on occupational health as well as formulate codes of practice. It has the duty to spread information on occupational health as well as promote research aimed at preventing disease, injury or death. The Act lists the duties of the employer as the following:

(a) To render the place of work healthy and safe;

(b) To make the environment free from avoidable physical and mental stress;

(c) To prevent industrial accidents;

(d) To provide facilities for first aid;

(e) To inform all workers of the dangers to health and injury prevention measures;

(f) To record and inform the Director of Labour of any accidents or diseases.

69. The Act provides for the appointment of inspectors charged with the enforcement of these duties of the employer. The inspectors are independent and have the right of access to all places of work. Inspectors may also demand the competent authorities produce all certificates relating to safety, health and efficiency concerns of any building or mechanical device.

70. The rights enunciated in this subsection are therefore provided for through the enactment of the above legislation and regulations, in combination with article 32 of the Constitution. There has been no case law concerning racial discrimination in connection with the above-mentioned provisions.

Article 5 (e) (ii)

71. See comments on article 5 (d) (ix).

Article 5 (e) (iii)

72. The Housing Authority Act of 1976 establishes a body (the Housing Authority), which "shall be a body corporate having a distinct legal personality and capable of entering into contracts, of acquiring, holding and disposing of any property for the purpose of its functions, of suing and being sued, and of doing all such things and of entering into all such transactions as are incidental or conducive to the performance of its functions under this Act". The function of the Authority is to "develop, to promote and to finance the development of, and to administer, housing estates and other residential and commercial accommodation and related facilities and amenities, to promote and finance home ownership and generally to improve housing conditions in Malta".

73. The Housing Authority provides residences at subsidized rates according to a number of schemes by means of which all eligible interested Maltese citizens can apply for this purpose. The criteria established by the Authority to determine the eligibility of prospective applicants are based exclusively upon socio-economic factors applicable to all Maltese citizens, irrespective of racial origin.

74. There has been no case law concerning racial discrimination in connection with the housing situation in Malta. However, it must be mentioned that although it does not appear that discrimination is a widespread problem in Malta at the present time, there have been some claims that discrimination in the renting of accommodation has occurred.

Article 5 (e) (iv)

75. The entire population is in some way recipient of social security benefits. The right to social security is provided by the Social Security Act (chapter 318 of the Laws of Malta). The Act provides for two basic schemes. One scheme is known as the non-contributory scheme, and the other as the contributory scheme. In the non-contributory scheme the basic requirement for entitlements is that the conditions of the means test are satisfied. In the contributory scheme, the basic requirement for entitlement is that specific contribution conditions are satisfied.

76. The non-contributory scheme, which was originally meant to cater for those below the "poverty line", has over a period of years evolved into a comprehensive scheme with a number of provisions that are intertwined in such a way that one type of benefit supplements another. This scheme has succeeded in providing additional assistance to certain specific categories such as the disabled, single parents, as well as, in the case of a family as a single unit. The non-contributory schemes cover pensions, social assistance and medical assistance.

77. The contributory system may be perceived as the other side of the coin. This system approaches universality and covers practically all strata of Maltese society. All employed, self-employed, self-occupied as well as unemployed persons may be insured. Amongst the list of benefits falling under the contributory schemes, one can mention marriage grants, sickness benefits, unemployment benefits and various categories of pensions.

78. Hybrid schemes comprise:

(a) Family benefits, including children's allowance, special allowance, parental allowance, handicapped child allowance, maternity benefit, family bonus and emergency assistance;

(b) Bonuses for social security pensioners and recipients of social assistance.

79. Besides the social assistance allowance, one has to take into account the various social benefits to which the same person may be entitled, which amongst others include yearly bonuses, children's allowances, disabled children's allowances, housing allowances, sickness assistance, maternity benefits, medical aid grants, etc. In addition, it should be pointed out that Government subsidizes housing, health care is free and transport is cheap.

80. When one considers the packet of social assistance/benefits to which a person is entitled, these together are generally considered to be adequate.

81. The rights laid down in this subsection of the Convention are thus covered through the existence of the above-mentioned legislation in combination with article 32 of the Constitution.

82. Moreover, Malta is party to the European Convention on Social and Medical Assistance, so that nationals of most States parties to the Convention are guaranteed social and medical assistance while living in Malta.

83. There has been no case law concerning racial discrimination in connection with the above-mentioned provisions.

Article 5 (e) (v)

84. Education up to and including university level is free and article 10 of the Constitution provides that primary education shall be compulsory and in State schools shall be free of charge.

85. In addition, article 11 of the Constitution states:

"Capable and deserving students, even if without financial resources, are entitled to attain the highest grades of education.

"The State shall give effect to this principle by means of scholarships, of contributions to the families of students and other provisions on the basis of competitive exams."

86. The law regulating education in Malta (Education Act) defines the rights and obligations of students, parents, the State and non-governmental organizations in the sphere of education. The educational infrastructure in Malta provides an extensive system of education catering for all requirements at kindergarten, primary, secondary and post-secondary levels.

87. Through the application of article 32 of the Constitution, this system is available to all Maltese citizens, irrespective of racial background. These rights are further safeguarded through the applicability of article 2 of Protocol No. 1 to the ECHR in combination with article 14 of the European Convention.

88. In addition, Government has established an Office of the Ombudsman for the University of Malta (the only university on the Islands), who receives and considers cases of alleged injustices.

89. There has been no case law concerning racial discrimination in connection with the above-mentioned provisions.

Article 5 (e) (vi)

90. Although there is no specific provision in Maltese legislation which caters exclusively for the protection of the right to equal participation in cultural activities, article 32 of the Constitution amply covers such situations and violation of this provision could be cited if participation in cultural activities is denied on grounds of race.

91. There has been no case law concerning racial discrimination in connection with the above-mentioned provisions.

Article 5 (f)

92. Although there is no specific provision in Maltese legislation which caters exclusively for the protection of the right of access to public facilities, article 32 of the Constitution is generic enough in its content to provide amply for such situations. There has been no case law concerning racial discrimination in connection with the foregoing provisions.

93. The enforcement of the above-mentioned protection provisions is regulated by article 46 of the Constitution. The Civil Court, First Hall, has original jurisdiction to hear and determine any application made by a person who alleges that any of the provisions of sections 33 to 45 (inclusive) has been, is being or is likely to be contravened in relation to him.

94. The Constitutional Court has jurisdiction to hear and determine appeals from the decisions of the Civil Court, First Hall, under section 4 of the Constitution.

Article 6

95. See parts I and II, particularly under articles 3 and 4.

Article 7

96. Malta is actively committed to the strengthening of the traditional Maltese acceptance of racially different individuals in all aspects of life. As stated in previous reports, this is mainly implemented in the field of teaching, education, culture and information. There exists a comprehensive inclusion of topics destined to increase awareness in the student of anti-racist values. Racial tolerance and international understanding are included in the compulsory social studies component of the national curriculum, starting at the age of four. The Social Studies syllabus, at secondary level, encompasses in implicit terms the subject matter referred to in the Convention. Moreover, the education authorities have used the media and the State television channel to mobilize public opinion on the need to address this problem. They have endeavoured to make the general public aware of the benefits and self-fulfilment accruing from fostering tolerance, friendship and solidarity amongst peoples.

97. Students are actively encouraged to correspond with children in other countries, and efforts are being made to increase the number of foreign students studying in Malta; between 1994 and 1995, the number of foreign students at the university increased by 25 per cent. Various campaigns have also been undertaken in the media to mobilize public opinion against racial discrimination, and the Government has taken measures to improve the legal awareness of persons living in Malta as to their rights and obligations as regards racial discrimination. One particular European anti-racism campaign has been launched in April 1998 during a seminar of the National Union of Students in Europe hosted by the Malta University Students Council. The campaign, which is aimed at encouraging national student unions to promote anti-racism at their respective universities, is supported by the Council of Europe.

98. The Ministry of Foreign Affairs assisted a Maltese NGO in the publication of a booklet in the Maltese language entitled "Human Rights - What do you know about them?" together with the Universal Declaration of Human Rights. Copies have been disseminated in all schools on the occasion of the fiftieth anniversary of the Universal Declaration.

99. A Maltese magistrate has also participated on behalf of the Government in an international seminar on the place and role for national specialized bodies in combating racism. The seminar was organized jointly by the Federal Commission against Racism (Berne) and the Swiss Institute of Comparative Law (Lausanne), with the support of the Council of Europe. The seminar took place in Lausanne from 22 to 24 October 1998. The aim of the seminar was to address topics of interest to specialized bodies combating racism.

100. The official number of refugees in Malta as of 31 December 1997 is 448 (308 adults and 140 children). The number of refugees is divided into 96 Europeans (all ex-Yugoslavs) and 352 non-Europeans (Iraqis - 177; Sudanese - 67; Palestinians - 37; Algerians - 33; Sierra Leoneans - 10). Of the 352 non-Europeans, 223 are UNHCR mandate refugees and other asylum seekers who are given temporary protection until they find a country of resettlement or can safely return home.

101. An additional "ad hoc" proviso concerning racial discrimination can be found in Malta's extradition law, specifically article 10 (1) of the Extradition Act, which states that:

> "A person shall not be returned under this Act to any country, or committed to or kept in custody for the purpose of such return, if it appears to the Minister or to the Court of committal -
>
> "(b) that the request for his return (though purporting to be made on account of an extraditable offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, place of origin, nationality, political opinion, colour or creed;
>
> "(c) that he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, place of origin, nationality, political opinion, colour or creed."

102. The demographic composition of Malta may be analysed from the latest available demographic review published by the Central Office of Statistics of Malta. A copy of this latest Demographic Review of the Maltese Islands (1996) is annexed to this report. Also annexed to this report is a copy of volume 1 of the 1995 Census of Population and Housing in Malta, concerning population, age, gender and citizenship, published by the Central Office of Statistics in 1997.

103. With regard to the request made by the Committee that Malta submit a copy of the report on constitutional reform, the Government wishes to inform the Committee that discussions on this matter are still going on. The report will be forwarded to the Committee upon its completion.

UNITED
NATIONS

CERD

International Convention on
the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/337/Add.4
12 May 1999

Original: ENGLISH

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9
OF THE CONVENTION

Fourteenth report of States parties due in 1998

Addendum

NEPAL*

[18 March 1999]

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* This document contains the fourteenth report, due on 1 March 1998. For the ninth, tenth, eleventh, twelfth and thirteenth reports of Nepal, submitted in one document, and the summary records of the meetings at which the Committee considered that report, see documents CERD/C/298/Add.1 and CERD/C/SR.1292.

The information submitted by Nepal in accordance with the consolidated guidelines for the initial part of the report of States parties is contained in HRI/CORE/1/Add.42.

GE.99-41870 (E)

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I. COUNTRY PROFILE

A. Geophysical characteristics

1. Nepal is a landlocked country situated between China in the north and India in the east, west and south. It lies between 26° 22' N and 30° 27' N latitude and 80° 4' E to 88° 12' E longitude. It has a land area of 147,181 km^2, with an average length of 885 km, east to west, and a width of 193 km, north to south.

2. The altitude rises from about 70 m from sea level in Terai, the southern plain, to 8,848 m in the high Himalayas to the north. It has a tremendous altitude variation, with a wide range of topography and climates, ranging from the subtropical to the alpine. The annual rainfall ranges between 1,154 mm and 3,620 mm.

3. Topographically, Nepal is divided into three belts: the Mountains (35.21 per cent), the Hills (41.68 per cent) and the Terai (23.11 per cent of total area). For administrative purposes, the country is divided into 5 development regions and 75 districts. These districts are further subdivided into 58 municipalities and 3,912 Village Development Committees (VDCs).

B. History and political structure

4. The history of modern Nepal begins only in 1769 A.D., when the founder of present-day Nepal, King Prithvi Narayan Shah, unified a number of small feudal States into a single State with the valley town of Kathmandu as its capital. In 1846 A.D., following the Kot massacre, the Shah Kings, successors to Prithvi Narayan Shah, lost their power to the Rana Prime Ministers. It was the start of a 104-year Rana family oligarchy. Up to the middle of this century, Nepal was little known outside South Asia.

5. King Tribhuvan Bir Bikram Shah Dev announced the establishment of democracy in Nepal in February 1951, liberating the country from the Rana regime. In 1958 King Mahendra Bir Bikram Shah Dev introduced a new constitution providing for a parliamentary form of government, and the first-ever popular election on the basis of adult franchise was held in early 1959. An elected government took power for the first time in the history of Nepal, but this experiment did not last long. On 15 December 1960, King Mahendra declared an emergency and introduced a partyless *panchayat* system, dismissing the 19-month-old democratically elected Cabinet. A new constitution promulgated in 1961 vested the sovereignty of the State in the Crown, from where all legislative, executive and judicial powers emanated. The King was thus placed in the centre and at the apex of government machinery.

6. As a result of a popular movement launched in 1990, the partyless *panchayat* system was dissolved and a new, democratic constitution was promulgated. A multi-party parliamentary system on the Westminister model was established with the King as head of State (constitutional monarch), the Prime Minister responsible to the Parliament as the head of Government, and an independent judiciary. Parliament includes a House of Representatives of 205 members and a National Assembly or Upper House consisting of 60 members.

7. There are about 40,000 female members (20 per cent) of local bodies (VDCs and municipalities).

C. Characteristics of the population

8. There has been a steady increase in the population of Nepal. In 1961, the population was recorded as 9.4 million, which doubled within 30 years. Accordingly to the census of 1991, the total population of Nepal is 18.5 million, 49.9 per cent male and 50.1 per cent female. Of the total population 52 per cent are children below 18 years of age. About 12 per cent of the population resides in the urban areas and 88 per cent in the rural areas. The annual growth rate of the population during the inter-census period of 1981-1991 was 2.1 per cent as compared with 2.66 per cent during the period 1971-1981. If the current growth rate of 2.1 per cent continues for at least the next 30 years, the present population of 21 million will reach 40 million in 2030. The population distribution by sex and age is given below:

Age group	Percentage of population by sex and age		
	Male	Female	Total
0-14	44.4	41.8	43.1
15-64	52.15	54.6	53.4
65+	3.5	3.6	3.5

Source: Population Projection, 1996, Central Bureau of Statistics, National Planning Commission.

D. Economic overview

9. Agriculture dominates the life and economy of the country. Agriculture contributes more than one half of the household income, provides employment to about 80 per cent of the population, and has a significant bearing on the manufacturing and export sectors. The share of agriculture in GDP, however, has declined consistently in the last two decades when agricultural production grew by only 2.3 per cent annually. The service sector is now assuming a more prominent place in the structure of the economy. The marked increase in the share of the service sector in GDP is mainly attributed to the expansion of trade and tourism services.

10. Poverty has been deeply rooted in the rural and agricultural households. About 14 per cent of the labour force is unemployed.

11. The per capita income stands at US$ 210. Around 18 per cent of the total land area is under cultivation. About 65 per cent of families hold 0.96 hectares of land on average.

12. The first elected democratic Government, formed in 1991, started wide-ranging reforms in the economy. During the Eighth Plan period (1992-1997), the economy grew by an average of 4.9 per cent annually. Nepal's

economy has undergone considerable change in the field of policy and legal reforms favouring economic liberalization. It has also succeeded in allocating a significant amount of funds for rural development.

13. Economic growth averaged 3.9 per cent per year from the 1970s to the 1990s. Due to the high per capita population growth rate income grew by only 1.4 per cent per annum during the last 25 years. With about 45 per cent of the population below the poverty line, the marginal propensity to consume remained very high at 0.867 during 1986-1996.

14. The Government has adopted a liberal, open and market-oriented economic policy aimed at achieving sustainable economic growth, poverty alleviation and the reduction of regional imbalances, and at the same time maintain macro-economic stability. The economic reform process, however, slowed down in 1994 with several political events that led to the instability of the Government. Economic growth also remained unstable or uneven during the Eighth Plan period.

15. Despite some progress in improving the standard of living, poverty alleviation still remains a major challenge for the Government. There is chronic unemployment and underemployment, high population growth, and low educational and health status. The living standard of the socially backward communities has remained lower in the overall context. Therefore, the economic problems of the people have yet to be addressed.

16. Poverty alleviation is one of the main objectives of the Ninth Plan (1997-2002). The agricultural sector has been made the lead sector in reducing poverty and increasing employment opportunities. Agriculture, water resources and tourism have been identified as major sectors in efforts to increase the development process rapidly. A "one family, one employment" policy has also been adopted as a major strategy of the Ninth Plan.

E. Social and cultural characteristics

17. Nepal's marked topographical variations support broad cultural differences. There are about 60 different ethnic groups, speaking about 38 different languages. Inhabitants of the Hills and Mountains are mostly Tibeto-Burman origin, while those of the Terai are largely Indo-Aryan. Fortunately, Nepal enjoys unique social peace and harmony though it is a multi-ethnic and multi-religious country.

18. Nepalese society is male dominated. Men make most of the household decisions in which women have only a supporting role. All girls are socialized in such a way that only enables them to be good wives and serve their husbands. There is a son preference system in almost every community.

19. In Nepal the Indo-Aryan and Tibeto-Burman ethnic groups have two distinct marriage systems. In Indo-Aryan societies the marriage of girls takes place much earlier than in Tibeto-Burman ethnic groups. Among Indo-Aryan societies a young widow is also not supposed to remarry but there is no such restriction among Tibeto-Burman societies. There is greater freedom for girls in Tibeto-Burman societies concerning marriage. Inter-caste marriage is gradually becoming acceptable within certain ethnic groups. In

some ethnic groups in Terai, especially along the Indian border, a dowry system prevails. In a few Tibeto-Burman communities in very remote villages of the country, there still exists a system of polyandry in which a girl marries all the brothers in a family.

F. Caste and ethnicity

20. The people of Nepal are socially segmented along lines of caste and sub-caste and ethnic and sub-ethnic groups. According to the 1991 census, there are more than 60 such groups, along with 20 major language groups. Many groups are endogamous, perform distinct *rites de passage* and maintain various types and degrees of commensal and other forms of group exclusiveness.

21. The caste system was recreated/defined in the time of the late King Jayasthiti Malla. He mentioned four main castes, Brahmin, Chhetri, Vaishya and Shudra, and 16 sub-castes in each main caste. Further, he divided the castes on the basis of the division of labour in the country. The caste system was primarily hierarchical. Brahmin was identified as the highest caste and Shudra was the lowest. He described the system in his book, Human Behavioural Science, in the 1930s. Since then, members of the Shudra were identified as untouchable; they could not enter the houses of higher caste people and water touched by them was considered impure by the upper castes. The Brahmins had the most power; their duties were to guide, direct and create awareness of social values in society, perform ritual activities, etc. Punishments for the same crime were also different according to whether it was committed by a Brahmin, a woman or a person belonging to a lower caste. Deep social rifts and distance separated the high caste groups from those caste groups regarded as untouchables.

22. Racial discrimination in Nepal was legally abolished by the enactment of the National Code, 1963 (*Muluki Ain*), but it persists in rural areas. For an overwhelming majority of people, the caste system continues to be an extremely salient feature of personal identity and social relationships and, to some extent, determines access to social opportunities. Therefore, the human development indicators for occupational castes (so-called lower castes) are lower than for other castes. The caste system is weakening considerably in urban areas, workplaces and areas of high migration. There are also instances of a household or an individual having gone up in caste, even in the rural, indigenous areas, on account of the acquisition of wealth/income, learning or the adoption of particular modes of life.

G. Social development trends

23. Nepal is fortunate to have social peace and harmony despite its multi-ethnic and multi religious national character. It has religious tolerance. Social security and welfare form an important part of the national agenda and are considered an integral part of all-round development of the country.

24. The health sector in Nepal has been somewhat successful in achieving the development of an institutional network for the delivery of services up to the local level. However, in the absence of effective interventions in the technical and managerial domains, there has not yet been a positive impact on

the health status of the rural people. An analysis of demographic and disease patterns indicates that preventive infectious diseases, maternal and prenatal disorders and nutritional deficiencies are still the predominant diseases, though showing a declining trend.

25. There has been a significant improvement in the education sector over the years. The adult literacy rate has increased from 24 per cent in 1981 to 40 per cent in 1996. The lowest literacy is among the occupational castes. Women constitute more than two thirds of the illiterates. The net enrolment ratios are 70 per cent for the primary level, 45 per cent for the lower secondary level and 36 per cent for the secondary level. However, Nepal still lags far behind in general, technical and vocational education.

26. Due to the slow growth of socio-economic opportunities, achieving the goals of social development has proved to be an uphill task for the Nepalese people. Moreover, the resources to expand and develop health, education, shelter, drinking water and sanitary facilities are relatively limited. Social development activities are more limited in backward communities as compared to other ethnic communities.

II. SPECIAL MEASURES RELATING TO SPECIFIC ARTICLES OF THE CONVENTION

A. Article 2

27. That all citizens have equal rights is a principle of the Constitution of the Kingdom of Nepal, 1991 and all branches of government are devoted to giving it concrete form. Article 11 of the Constitution stipulates that all citizens are equal before the law and entitled to the equal protection of the law in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination. Article 11 (2) of the Constitution states that there shall be no discrimination in the application of general law on grounds of religion, race, sex, caste, tribe, ideological conviction or any of these. However, special legal provisions may be made for the protection and advancement of the interests of women, children, the aged, or those who are physically or mentally disabled or those who belong to a class which is economically, socially or educationally backward. Similarly, article 11 (4) provides that no person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities. Any contravention of this provision is to be made punishable by law.

28. The *Muluki Ain* (hereinafter referred to as National Code) has prohibited any sort of discrimination on the basis of caste, any denial of access to public places or public utilities, and provides for a punishment of one year's imprisonment or a find of 3,000 rupees or both for violators of this provision.

29. Section 3 of the Civil Liberties Act (Nagarik Adhikar Ain), 1954 deals with equality before the law and equal protection of the law; section 4 prohibits any restrictions against any citizen on the basis of religion, race,

sex, caste, or any of these in appointment to the civil service. The Act has provided for positive discrimination in favour of the socially or culturally backward ethnic groups.

30. Again, even in times of an emergency - declared under article 115 of the Constitution - the right to equality stipulated in article 11 of the Constitution may not be suspended.

31. According to the Constitution the guarantee of basic human rights to every citizen is a fundamental and unalterable part of the Nepalese political structure. In order to materialize this norm, Part 3 of the Constitution is devoted to the fundamental rights comprising, to a very large extent, the human rights recognized by the international community. Article 18 of the Constitution grants each community residing within the Kingdom of Nepal the right to preserve and promote its language, script and culture, as well as to operate schools up to the primary level in its mother tongue for imparting education to its children.

32. Article 25 envisages the principal objective of the State as being the promotion of the general welfare on the basis of the principles of an open society by establishing a just system in all aspects of the national life, including the social, economic and political life, while at the same time protecting the life, liberty, and property of the people. The State's fundamental economic objective is to transform the national economy into an independent system by preventing the country's available resources and means from being concentrated within a limited section of society, by making arrangement for an equitable distribution of economic gains on the basis of social justice.

33. The Compensation Act on Torture, 1997 states that each and every citizen, irrespective of caste, religion, ethnicity, colour and race, has the right to claim compensation from the Government for cruel, inhuman or degrading treatment received during any trial, investigation or inquiry. The Social Welfare Act, 1992 has provisions for taking the necessary steps to protect and promote the interests of socially backward communities.

34. The Local Government Act, 1992 comprises the District Development Committee Act, the Village Development Committee Act and the Municipality Act. The Act authorizes the District Development Committee and makes it responsible for forming a subcommittee comprising members of backward communities to make plans for the protection of their interests. The local bodies are responsible for protecting and promoting the interests of different communities, religions, languages and cultures. In addition, while formulating plans Village Development Committees and municipalities are obliged to give priority to programmes which directly benefit backward communities.

35. Similarly, other Acts like the Children's Act, 1992, the Development Bank Act, 1996 and others have provisions to protect and promote the interests and development of backward communities.

36. The Supreme Court has the extraordinary power to issue necessary and appropriate orders for the enforcement of the fundamental rights of citizens and of any other legal right for which no other remedy has been provided, or

for redressing situations for which a remedy, even though provided, appears to be inadequate or ineffective, or for the settlement of any constitutional or legal question involved in any dispute of public interest or concern. For these purposes, the Supreme Court may, with a view to imparting full justice and providing the appropriate remedy, issue appropriate orders and writs including the writs of habeas corpus, mandamus, certiorari, prohibition and quo warranto.

37. His Majesty's Government of Nepal does not sponsor, defend or support racial discrimination by any persons or organizations. Hence, Nepal has adopted the necessary constitutional and legislative measures to give effect to the rights recognized in the Convention.

38. The attempt/campaign to eradicate racial discrimination started with a popular movement in 1951 and ended legally with the promulgation of the Civil Liberties Act, 1954 and the National Code in 1963. However, racial discrimination in the society, especially in rural areas, is still in existence. So-called untouchables cannot even enter the houses of the people of so-called higher and middle-class castes. On one hand, they are socially suppressed by the upper classes and, on the other hand, they suffer from poverty; the intensity of poverty seems to be higher in socially backward people.

39. The role of repressed people or socially backward communities was also significant in the movement to restore multi-party democracy in 1990. After that for eight years those people were unable to secure the expected reforms for their communities.

Efforts to promote the welfare and development of backward communities

40. During the Seventh Plan (1985-1990), the Government implemented some social security programmes such as a scholarship programme and a rehabilitation and research programme for the nomadic Raute people, which included training for backward and unprivileged communities. A project to settle the Raute was initiated. The Eighth Plan (1992-1997) included social welfare programmes and local development programmes such as socio-economic development of backward communities, social security, scholarship programmes, skills-development training, rural self-employment, rehabilitation, social awareness-raising programmes, etc. In fiscal year 1997/98, the Ministry of Women and Social Welfare has provided financial assistance for socially disadvantaged communities/castes (Badi, Mushar, Ghanghar, Dome, Dushar, Raute, Satar, Dhimal, Chhamar, Damai, Kami, Sharki, Tharu, Sunuwar, Khatwe and Kumal) to promote their traditional technology. However, programmes to raise the status of repressed people and backward communities were not addresssed in national policies and programmes in an integrated way.

41. Non-governmental organizations had also conducted various programmes for poor and under privileged people relating to the education, health and welfare of women, children and youth.

42. In addition, awareness creation, income generation, education and health facilities programmes were implemented to address the problems of the backward communities. However, the gap between so-called higher and lower castes has

not narrowed. There have hardly been any changes in the society or the living standard of the poor. Consequently, the people of backward communities have felt discriminated against and could not believe that the Government was doing anything for their welfare and development. The main reasons for this are: lack of integrated programmes, weak implementation and sustainability, failure to mainstream backward communities and repressed people into the national development process, centre-oriented/based programmes rather than community-based/participatory programmes, little attention to human resource development and lack of encouragement to the development and modernization of traditional occupations and skills, lack of effective institutional mechanisms, etc.

43. His Majesty's Government of Nepal has adopted specific policies, strategies and programmes for the socio-economic development of repressed people/backward communities in the Ninth Plan (1997/8-2002/3), and will make them partners with other people/communities in the national development process/campaign.

44. His Majesty's Government of Nepal has a long-term perspective for the development and rights of the backward communities. Programmes will be formulated and implemented with a view to:

- enabling people of backward communities to participate as partners with others in the national development process;

- creating an environment to develop their personality while promoting their skills, experience and creativity;

- eradicating racial discrimination and social imbalances through the socio-economic development of those communities/ethnic groups;

- eliminating poverty and unemployment within 20 years;

- promoting national cultural development through conservation and research into the traditions and cultures of the repressed people/backward communities.

45. The long-term objectives of the National Plan of Action on Nutrition include strengthening and upgrading the Small Farmer Development Programme and the Production Credit for Rural Women Programme to provide self-employment and income-generating opportunities to socially and economically backward sections of the society.

46. The Ninth Plan (1997/8-2002/3) has specific objectives for the development of repressed people/backward communities which are given below in brief:

- Eliminate irrational traditions and socially deep-rooted racial discrimination by the socio-economic development of repressed and backward community;

- Increase their socio-economic capabilities by modernizing their traditional professions, and mainstream their contribution into the national development process;

- Prepare an appropriate social base for the balanced allocation of the country's resources;

- Raise the level of overall cultural development by preserving the culture of different ethnic groups and by eradicating the feeling of social discrimination;

- Improve the living standard of backward communities, focusing on the access to health, education, training, income generation, cultural conservation facilities, etc.

47. The goals of the policies and strategies of the Ninth Plan are to:

- Empower repressed people and backward communities by creating a participatory process for socio-economic development;

- Introduce new initiatives and improve structural and institutional mechanisms for the development of backward communities;

- Spend a certain percentage of the government grants provided to Village Development Committees for uplifting socially backward communities;

- Encourage NGOs to work for the all-round development of repressed peoples and backward communities;

- Implement programmes, with support/soft loans, for developing their education, health, drinking water situation, etc;

- Encourage and provide scholarships to students of those communities up to higher technical/vocational education;

- Implement integrated programmes, with their participation, for their development.

48. The institutional arrangements and implementation procedure for the programmes mentioned in the Ninth Plan are as follows:

(a) Establish a national-level council for backward communities to formulate policies and programmes, coordinating the work of district and national agencies preserving the culture and occupations of backward communities, and establish district-level committees for those communities in close coordination with District Development Committees;

(b) District-level committees, consisting of representatives of Village Development Committees, will have a separate mandate to develop backward communities, formulating plans and programmes and implementing them;

(c) District-level committees will work with NGO partners to implement development activities for socially and economically backward communities. The committees will send recommendations and suggestions to the council and central-level agencies for the development of backward communities.

49. His Majesty's Government of Nepal has been continuing the scholarship programmes for the students of socially backward communities. In addition, all students of those backward communities and occupational castes get NRs. 25 for 10 months of the year as motivation.

50. Elements of the human resource development programmes for backward communities include:

- Raising awareness in order to increase access to formal and non-formal education and training;

- Providing priority access, especially to technical education, for students of backward communities;

- Providing primary education in the mother tongue as far as practicable;

- Special programmes like family planning, maternal and child health, etc. will be implemented in backward communities on a priority basis;

- Providing female health volunteer training to women of those communities to enable them to work in their areas;

- Encouraging them to learn different skills for employment and providing them with training loans, on the recommendation of the district committee, to be paid back in instalments;

- Mass social awareness creation against all forms of discrimination;

- Special attention will be given to raising their living standard and their levels of health and education;

- The phased implementation of the above programmes;

- Encouraging social workers, communities and institutions to contribute to eradicating social inequality, racial discrimination and the development of backward communities.

51. Other economic and social development programmes include:

- Encouraging backward communities to undertake different traditional and modern income-generating activities, with seed money provided by the government;

- Establishing a museum to conserve and develop their arts and cultures, and establishing a study centre on the repressed peoples and backward communities;

- Creating opportunities for employment and income generation for them through committees at different levels;

- Motivating them to explore their skill and capacities.

52. His Majesty's Government of Nepal is making every effort to eliminate all forms of socio-economic discrimination, including racial discrimination. The above-mentioned legal provisions, policies, strategies and programmes are indicative of the commitment to the Convention.

53. About 10 NGOs concentrate on the welfare, development and rights of repressed peoples and backward communities and advocate and work for the development and rights of those sectors of the society.

B. Article 3

54. His Majesty's Government of Nepal does not have public policies of racial segregation on apartheid. Similarly, the Government does not have public policies which favour or incite discrimination or separation resulting from such policies.

C. Article 4

55. As mentioned above, no discrimination exists in Nepal, either in terms of legal provisions or of policy and programme measures. The National Code prohibits any sort of discrimination on the basis of caste, any denial of access to public places and public utilities, and provides for the punishment of violators of this provision. The Civil Liberties Act, 1954 prohibits any restrictions against any citizen on the basis of religion, race, sex, caste, or any of these in appointments to the civil service and the Constitution stipulates that all citizens are equal before the law.

56. Hence, all legal measures are against propaganda and organizations which are based on ideas or theories of the superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form. Further, it is not allowed to disseminate ideas based on racial superiority or hatred, to incite racial discrimination, to commit any act of violence or incite others to commit such acts against any race or group of persons of another colour or ethnic origin. There is no provision of assistance, including financial, to racist activities. In addition, no public authorities or institutions are permitted to promote or incite racial discrimination. His Majesty's Government of Nepal does not sponsor, defend or support racial discrimination by any persons or organizations.

57. In Nepal, no news item, article or other reading material is censored which may jeopardize the harmonious relations subsisting among the people of various castes, tribes or communities.

D. Article 5

58. As mentioned above (art. 2), His Majesty's Government of Nepal has provided equal rights to Nepalese people in all aspects.

59 Article 14.1 of the Constitution states that no person may be punished for an act which was not punishable by law when the act was committed, nor shall any person be subjected to a punishment greater than that prescribed by the law in force at the time of the commission of the offence. Any person held under preventive detention shall, if the detention was contrary to the law or in bad faith, have the right to be compensated in a manner as prescribed by law.

60. Any person, without distinction as to race, colour or ethnic origin, has the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution. Similarly the right to an affective remedy is provided under the Constitution and existing laws.

1. Civil and political rights

61. The Constitution guarantees political rights without any discrimination by reason of race, colour, religion, sex or ethnic origin. Article 47 of the Constitution considers any citizen of Nepal having attained the age of 25 years to be eligible to be a candidate for Parliament. The Parliament Member Election Act, 1990 provides that any citizen having attained 18 years of age is considered eligible to vote in his/her own constituency for the member of parliament, provided that he/she has registered and his/her name appears on the voting list published by the Election Commission. No eligible persons are deprived of the exercise of their voting/civil rights.

62. According to the Local Bodies Election Procedure Act, 1991 any Nepalese citizen having permanent domicile or residing more than a year in the local area concerned and having attained 18 years of age is considered to be eligible to vote and any citizen having attained the age of 21 years is considered eligible to be a candidate for the concerned local body.

63. Irrespective of race, caste, religion, creed, ethnicity or colour, every person who has his/her domicile in Nepal is eligible for citizenship by birth in Nepal, by having one parent who was born in Nepal, or by naturalization by virtue of section 6 of the Nepal Citizenship Act, 1964 (art. 8). A foreign woman who marries a Nepalese citizen is also eligible for citizenship.

64. The Constitution guarantees civil rights. All citizens have equal rights before the law and have the following freedoms:

(a) Freedom of opinion and expression;

(b) Freedom to assemble peacefully and without arms;

(c) Freedom to form unions and associations;

(d) Freedom to move throughout the Kingdom and reside in any part thereof; and

(e) Freedom to practise any profession or to carry on any occupation, industry or trade (article 12.2 of the Constitution).

65. These freedoms may be exercised with the following provisos:

(a) Nothing in sub-clause (a) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty and integrity of the Kingdom of Nepal, or which may jeopardize the harmonious relations among the peoples of various castes, tribes or communities, or on any act of sedition, defamation, contempt of court or incitement to an offence or on any act which may be contrary to decent public behaviour or morality;

(b) Nothing in sub-clause (b) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty, integrity or law and order situation of the Kingdom of Nepal;

(c) Nothing in sub-clause (c) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may undermine the sovereignty and integrity of the Kingdom of Nepal, or which may jeopardize the harmonious relations among the peoples of various castes, tribes or communities which may instigate violence, or which may be contrary to public morality;

(d) Nothing in sub-clause (d) shall be deemed to prevent the making of laws which are in the interest of the general public, or which are made to impose reasonable restrictions on any act which may undermine the sovereignty and integrity of the Kingdom of Nepal, or which may jeopardize the harmonious relations among the peoples of various castes, tribes or communities;

(e) Nothing in sub-clause (e) shall be deemed to prevent the making of laws to impose reasonable restrictions on any act which may be contrary to public health or morality, to confer on the State the exclusive right to undertake specified industries, businesses or services, or to impose any condition or qualification for carrying on any industry, trade, profession or occupation.

66. Every person shall have the freedom to profess and practise his/her own religion as handed down to him/her from his/her forefathers and every religious denomination shall have the right to maintain its independent existence and for this purpose to manage and protect its religious places and trusts (article 19 of the Constitution).

Right to marriage and choice of spouse

67. The legal age for marriage without parental consent is 21 years for males and 18 years for females whereas with parental consent the marriage age is 18 years for males and 16 years for females. The free will of the

prospective spouses is given due importance; however, in some cases, prospective spouses might face social obstructions if the man and woman come from different social standings/castes/ethnic groups.

68. According to the prevailing laws, a man and woman who have attained the marriageable age may register their marriage at the District Administration Office and are given a Certificate of Registration of Marriage duly signed by the concerned authorities.

2. Economic, social and cultural rights

69. Article 17 of the Constitution states that all citizens have the right to property subject to existing laws which cover the right to acquire, own, sell and dispose of such property.

70. To develop a healthy social life by eliminating all types of economic and social inequalities and establishing harmony amongst the various castes, tribes, religions, languages, races and communities is the social objective of the State. The State is also directed to pursue a policy of mobilizing the natural resources and heritage of the country in a manner useful and beneficial to the interests of the nation. Article 25 of the Constitution envisages the principal objective of the State as to promote conditions of welfare on the basis of the principles of an open society by establishing a just system in all aspects of the national life, including social, economic and political life, while at the same time protecting the life, liberty and property of the people. The State's fundamental economic objective is to transform the national economy into an independent system by preventing the country's available resources and means from being concentrated within a limited section of society, and by making arrangements for an equitable distribution of economic gains on the basis of social justice.

(a) Right to work

71. The Constitution guarantees all citizens the right to practise any profession or to carry on any occupation, industry or trade. Hence, anyone has the right to gain his living by work which he freely chooses or accepts. As to the safeguarding of this right, article 23 provides the right to constitutional remedy, i.e. to proceed to the court for enforcement of the right.

72. Everyone has the right to work to earn his/her living. There are legislative measures to safeguard the rights of employees, including minimum wages and conditions of work, and from provisions to enforce the regulations of specific firms or organizations governing employment.

73. The Nepalese legislative framework has outlawed child labour. Children are strictly prohibited from being involved in any work in a factory. However, children have long been a source of income for poor families and backward communities. As long as families do not have alternative sources of income, child labour in one form or another will continue to exist. Hence, there are certain protective measures according to which minors (ages 14-18)

may work, fixing a basic minimum wage, providing opportunities for non-formal education and job-oriented training, basing work on the age, sex and physical and mental capacity of the minor, and reducing working hours.

74. The Ninth Plan of the country contains a long-term vision for poverty alleviation which includes targeted programmes for indigenous groups in the poverty-prone areas. Such programmes will include the Remote Area Development Programme, the Backward Ethnic Communities Upliftment Programme, programmes for socially backward and other depressed communities, relief programmes for landless rural families, a programme to provide loan facilities to small landholders, a programme to provide shelter and agricultural land to targeted communities, an employment programme for poor and unemployed people of urban areas among others.

(b) Right to enjoyment of just and favourable conditions of work

75. The Nepalese legislative framework has ensured that every citizen has the right to enjoy just and favourable conditions of work. Article 20 of the Constitution prohibits trafficking in human beings, slavery, serfdom or forced labour in any form. Hiring minors to work in any factory or mine or in any other hazardous work is also prohibited.

76. In 1991, the Labour Act was enacted to secure the rights, interests, facilities and security of workers and employees in different sectors. The Act stipulates that the minimum wages of workers and employees is determined by His Majesty's Government on the recommendation of the Minimum Wages Fixation Committee comprising representatives of workers or employees, management and the Government. It should be noted that any agreement between management and labour providing wages less than those prescribed by the Government is prohibited. Article 11 (5) of the Constitution explicitly prohibits any discrimination in remuneration between men and women for the same work.

77. Moreover, the Labour Act provides for various arrangements regarding the health and safety conditions of work that are applicable to both men and women employees on an equal footing. Depending on seniority and competence, each has an equal opportunity to get promotion. Chapter 3 of the Labour Act makes provisions on working hours. To engage any employee in work of more than 8 hours a day or 48 hours a week is proscribed. A weekly holiday should be given and remuneration for public holidays.

78. Nepal has become party to various ILO conventions including the Convention on Equal Remuneration (No. 111), the Convention concerning Minimum Wages Fixing (No. 131) and the Convention on Weekly Rest in Industrial Undertakings (No. 14).

(c) Right to form trade unions

79. Article 12.2 (c) of the Constitution stipulates that all citizens are free to form unions and associations of their choice. Section 6 (3) of the Civil Liberties Act also provides the citizens with this right. Under article 112 of the Constitution, citizens are entitled to form and operate

political organizations or parties of their choice. Restrictions on this right may be imposed only by law on the ground of a genuine threat to the sovereignty and integrity of the country or public order or morality.

80. The Trade Union Act, 1992 has been enacted to protect and promote the vocational and professional rights and benefits of workers in any enterprise or corporation. Under section 4 of the Act, workers at any enterprise are allowed to form trade unions for the protection of their professional interests, and at least 50 trade unions or 5,000 workers at enterprises of a similar nature can, by agreement, form a trade union association. Under section 5, at least 10 trade union associations can, by agreement, form a trade union confederation. Under section 18, a trade union is made an autonomous and legal person or body and is free to function, subject to the provisions of the Act. Furthermore, the workers of any enterprise have, under section 76 of the Labour Act, the right to protest.

(d) Right to enjoyment of the highest attainable standard of physical and mental health

81. Article 26 of the Constitution directs the State to pursue policies that will raise the people's standard of living through the development of health, education, housing and employment opportunities. It also directs the State to pursue such policies in the fields of education, health and social security that will ensure the protection and welfare of orphans, helpless women, the aged and the disabled. It thus recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

82. His Majesty's Government adopted a comprehensive National Health Policy in 1991 with the objective of enhancing the health status of the people and developing the health sector in Nepal, both from the perspective of service delivery and of the administrative structure of the health system. The Policy classifies health services as preventive, promotional or curative, and makes arrangements for different levels of health institutions accordingly. The health policies of the Eighth Plan (1992-1997) were also in line with the National Health Policy.

83. Health education, information and communication programmes have been conducted in an integrated way. Nutrition programmes and growth monitoring of children are being implemented. Vitamin A and iodized salt are being distributed at the grass-roots level. Health services are being provided to children for controlling diarrhoeal diseases, acute respiratory infections and other prevalent diseases. Homeopathy and natural and traditional methods of health services are also being promoted to provide health services to the masses.

84. The health policy adopted in the Ninth Plan has incorporated a 20-year vision for primary health care. It has considered health as part of human rights and an effective measure to control population.

85. The policies and strategies in the Ninth Plan include: implementing the long-term National Health Plan; providing an integrated basic health-care package up to the village level; providing integrated basic health-care services on the basis of a referral mechanism; strengthening of the curative

health service, on the basis of a referral system, in basic health institutions and hospitals; provision of trauma health service facilities; providing reproductive health services up to the village level and demand-driven family planning services; developing a package programme including manpower, medicines and equipment, taking into account the concept of cost-effectiveness; and mobilization of the private sector and NGOs together with the Government for the development of the health sector. The other health policies include the development of ayurvedic services as an integral part of health services; effective planning, management and implementation of health services through a decentralized policy and process; implementation of a health personnel development plan; reforming the national health policy and laws; increasing resources for the health sector; and mobilization of the private sector and NGOs for resource generation. These policies and programmes will hopefully improve the health status of the people, including the backward communities.

(e) Right to education

86. Article 18 of the Constitution states that each community residing within the Kingdom of Nepal shall have the right to preserve and promote its language, script and culture, and that each community has the right to operate schools up to the primary level in its own mother tongue. Part 4, article 26, of the Constitution says that the "State shall pursue a policy of raising the standard of living of the general public through the development of education, health, housing and employment."

87. His Majesty's Government is fully aware of the importance of education to people. Therefore, education has been given due importance since the Government began implementing economic development plans. Nepal is endeavouring to attain the goal of basic education for all and in this context school education has now been made free. No fee of any nature will be charged by any primary school in the country. Textbooks up to grade five are also given to the students free of charge.

88. His Majesty's Government has a policy of expanding access to basic and primary education by increasing the number of primary schools. Moreover, new initiatives will be taken in the Ninth Plan to make primary education compulsory. Necessary arrangements will be made to empower local bodies to enforce free and compulsory primary education. Efforts are under way to make both secondary education and higher education accessible to the people as needed. One of the objectives of education, as identified by the National Commission on Education, is to support backward and underprivileged people to participate in the national mainstream.

89. The national literacy rate was 42 per cent as of 1996/97, 57 per cent among males and 27 per cent among females. The literacy rate among people of socially backward ethnic groups is lower than that of other ethnic groups. In order to increase the literacy rate, non-formal education schemes, particularly literacy programmes, will be implemented as a national campaign. For the out-of-school children of 6-14 years of age, it is envisaged to provide education through non-formal approaches such as the village-based "Chelibeti" and "Sikchya Sadan" programmes. The Government's efforts in this regard are being supported by international organizations.

90. There are several schemes to support poor but bright students through scholarships at every level from the primary school up to the university level.

91. In schools, attention is given to inculcating the values of tolerance, friendship, understanding, cooperation, racial harmony and other moral traits.

(f) Right to social security, including social insurance

92. The objectives of the welfare State can be realized with the improvement of the socio-economic status of backward communities. Social welfare programmes play a very important role in promoting social justice and welfare and in delivering basic services to save people from destitution. The goal of establishing a welfare State can be achieved only by making social security and social welfare an inseparable part of the comprehensive development strategy. Needs-specific programmes geared to specific target groups are essential for an effective impact. Similarly, an effective delivery mechanism relating to social welfare activities will need to forge a partnership between government agencies and NGOs. Senior citizens, disabled persons, deprived and oppressed groups of society and the common people as a whole can feel a sense of social security and welfare only if effective and targeted special programmes are implemented in various sectors such as education, health, community development, women and child development.

93. Article 26 (9) of the Constitution proclaims that the State shall adopt policies in matters of education, health and social security for the protection and welfare of orphans, helpless women, the aged and the disabled. The Village Development Committee Act of 1991 states that the Village Development Communities shall carry out programmes for the benefit and welfare of children and women.

94. Securing pubic trust is the most important challenge and goal of good governance or a State system. Social integration fosters unity and encourages collective work to achieve a common social goal. One of the major goals of social development is to create a sense of belonging in the society and the nation. Social integration can be encouraged by ensuring: (a) equality before the law; (b) minority rights; (c) protection of the interests of the disadvantaged and weaker sections of society; (d) effective implementation of anti-discrimination policies; (e) educational opportunities; and (f) effective governance.

95. In 1995, His Majesty's Government made a beginning with regard to social protection. The budget for 1994/95 introduced a programme to provide an old-age benefit of NRs. 100 per month for every person over 75 in five districts; the programme was expanded to cover all districts in 1995/96. Later, schemes to provide NRs. 100 per month to helpless widows over 60 and an allowance of NRs. 100 per month for permanently physically and mentally disabled persons. In addition, various provisions such as a monthly stipend of NRs. 25 each for about 75,000 female students in 10 remote mountain districts, free lunch for about 200,000 primary students in 8 districts, and the establishment of old-age homes in each development region and, later, in

each district were also adopted. A subsidized curative health service programme was launched in 1994/95 for senior citizens and children, including of backward communities.

96. The major objectives of social welfare programmes are: to protect the interests of the weak, helpless, socially and backward sections of society; to raise mass awareness in order to root out superstitious traditions of society; to inspire people to increase their spirit of cooperation in establishing a system to address common social problems; and to help people in time of severe hardship, irrespective of the reason.

E. Article 6

97. Articles 23 and 88 of the Constitution provide an effective remedy, including the ordinary and extraordinary jurisdiction of the Supreme Court of Nepal, for the protection of fundamental human rights. The extraordinary jurisdiction comprises habeas corpus, certiori, mandamus, quo warranto, prohibition and other necessary writs and orders.

98. The Compensation Act against Torture authorizes the competent District Court to hear cases of alleged torture. The Human Rights Commission Act authorizes the Human Rights Commission to take cognizance of the issue of the violation of human rights. The competent District Court has jurisdiction over the issue of discrimination under chapter 19 of the National Code, 1963.

Article 7

99. As mentioned above, His Majesty's Government has adopted non-discriminatory legal provisions. It has formulated immediate and periodic objectives and programmes to address the welfare and development of repressed people/backward communities. Similarly, immediate and effective measures have been taken, especially in the fields of social welfare, health, education, culture and income generation to combat the present situation of those communities. In view of the legislative measures and programme implementation measures described, it can be said that there is no discrimination against any race, tribe, sex, colour or religion in Nepal. However, a few discriminatory practices remain in the society rooted in social values which will take some years to fully eradicate.

III. CONCLUSION

100. Nepal is a country of multilingual and multicultural ethnic communities. the harmonious relationship between them is historically supported and established. The country has religious tolerance.

101. The equality of rights of citizens is a principle of the Constitution. All branches of current legislation are devoted to giving it a concrete form. Article 11 of the Constitution stipulates the equality of all citizens before the law and equal protection of the law as stipulated in the International Convention on the Elimination of All Forms of Racial Discrimination. Article 11 (2) of the Constitution states that there shall be no discrimination against any citizen in the application of general law on ground of religion, race, sex, caste, tribe or ideological conviction or any of

these. However, special legal provisions may be made for the protection and advancement of the interests of women, children, the aged, those who are physically or mentally disabled or those who belong to a class which is economically, socially or educationally backward.

102. His Majesty's Government has made efforts to implement programmes to improve the overall situation of socially and economically backward communities and ethnic groups, notably after the restoration of multi-party democracy in the country. Programmes to address the repressed people and backward communities were implemented during the period of the Eighth Plan or after the restoration of democracy. Notwithstanding, no significant change in the socio-economic life of the targeted people/communities occurred; in fact, it is obvious that it takes time to change the social status of communities. His Majesty's Government has not yet done an evaluation of the impact of those programmes to find out what changes have taken place in the targeted communities. It sought to conduct research to determine to what extent goals had been achieved and what and how the programmes are to be formulated and implemented.

103. In essence, existing legislative measures, past efforts made to improve backward communities, and policies and programmes adopted in the Ninth Plan indicate the firm commitment of the Government to the development and rights of repressed people/backward communities.

Annex

Human development by caste and ethnicity, 1996

Caste	Life expectancy	Adult literacy (%)	Mean yrs of schooling	Per capita income (US$)	Per capita purchasing power parity (PPP) income (US$)	Life exp. index	Educational attainment index	Income index	Human development index (HDI)	Ratio to national HDI Nepal = 100
Nepal	55.0	36.72	2.254	7 673	1 186	0.500	0.295	0.179	0.325	100.0
Brahmin	60.8	58.00	4.647	9 921	1 533	0.597	0.490	0.237	0.441	135.87
Chhetri	56.3	42.00	2.786	7 744	1 197	0.522	0.342	0.181	0.348	107.31
Newar	62.2	54.80	4.370	11 953	1 848	0.620	0.462	0.289	0.457	140.73
Gurung, Magar, Sherpa										
Rai, Limbu	53.0	35.20	2.021	6 607	1 021	0.467	0.280	0.152	0.299	92.21
Muslim	48.7	22.10	1.358	6 336	979	0.395	0.178	0.145	0.239	73.67
Rajbansi, Yadav,										
Tharu, Ahir	58.4	27.50	1.700	6 911	1 068	0.557	0.221	0.160	0.313	96.28
Occupational castes*	50.3	23.80	1.228	4 940	764	0.422	0.156	0.110	0.239	73.62
Others	54.4	27.60	1.880	7 312	1 130	0.490	0.226	0.170	0.295	90.94

Source: Nepal Human Development Report, 1998.

* "Occupational castes" mostly indicate the so-called "Untouchables" of the Hills and Tarai (Plains part of the country).